



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 13

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## SALES OF FUEL AND UTILITIES (Coal, Oil, and Wood; Electricity; Gas, Water)

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This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

### 1. COAL, OIL AND WOOD

**A. Exempt Sales.** Sales of fuels, other than gas and electricity, to the following for heating and cooking purposes are exempt:

Homes, mobile homes, apartment houses, boarding homes, nursing homes, overnight cabins, hotels and motels, and other buildings designed both for human habitation and sleeping, such as orphanages, homes for the aged and convalescent homes.

(Refer to Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.)

**B. Taxable Sales.** Sales of fuels, other than gas and electricity, for the following uses are taxable:

All commercial users except those listed in subsection 'A' above.

Five-gallon and similar containers of kerosene. These are presumed to be sold for taxable uses. If the customer states that a small container of kerosene is purchased for residential cooking and heating, the seller should obtain an affidavit from the customer.

Heating of a residential pool and/or garage.

## 2. ELECTRICITY

- A. 750 KWH per Month Residential Exemption.** All charges by an electric utility for the first 750 kilowatt-hours (KWH) per month of electricity for residential use are exempt, including charges for transportation and delivery and fuel adjustment charges whether or not those charges are separately stated.

- i. Exempt Sales.** This residential exemption applies to the following:

Homes, mobile homes, boarding homes and apartment houses;

Common meters in apartment houses for the purpose of lighting hallways, laundry rooms, etc.;

Seasonal dwellings, except tourist and trailer camps as defined in Section 1752, subsections 19 and 20 of the Sales and Use Tax Law;

Minimum billing with no usage of electricity.

(Refer to Sections 5 and 6 of this Bulletin for partial exemptions and other exempt sales.)

- ii. Taxable Sales.** This residential exemption does not apply to the following:

Hotels and motels, tourist and trailer camps, and overnight cabins;

Nursing homes (unless otherwise exempt);

Mobile home parks;

Outside area lighting when separately metered or charged at a flat rate;

All commercial users except those listed in subsection 'B' above.

- iii. Apartment Houses.** If two or more apartment units are billed on the same meter and the electric utility applies its tariff on a per unit basis, each unit is allowed a 750 KWH per month exemption.

If two or more apartment units are billed on the same meter and the electric utility does not apply its tariff on a per unit basis, there is only one 750 KWH allowance for all of the units.

iv. **Water Heaters - Separately Metered.** A user of electricity who qualifies for exemption of the first 750 KWH per month and has an electric water heater on a separate meter is entitled to only one 750 KWH exemption per month. For example, if a user consumes 600 KWH for other residential uses and 300 KWH for water heating during a given month, tax applies to 150 KWH for that month (the amount by which the total usage exceeds 750 KWH).

v. **Billings Other Than Monthly.** In the case of bi-monthly and irregular billings, the following will apply:

a. **Bi-monthly** - If the utility company bills once every two months, the first 1500 KWH for the two-month period are exempt.

b. **Initial and Final Billings** - If an initial or final billing is issued for a period of less than one month, the first 750 KWH on that bill are exempt. If the billing is for more than one month but less than two months, the first 1500 KWH for that period are exempt.

c. **Other Frequency Billings** - If a utility company regularly bills for periods other than monthly or bi-monthly, the exemption must be prorated. For example, a billing for a 45-day period would exempt the first 1,125 KWH.

d. **Multiple Vendors** – If more than one utility company bills a residential customer for portions of the same month, each utility company may exempt the first 750 KWH of electricity billed to the customer.

**B. Exemption for Certain Commercial Activities.** Electricity used by commercial farmers, commercial fishermen and commercial aquaculture in their respective commercial activities or support operations can be purchased exempt from sales tax. This exemption is applied on a meter-by-meter basis. If a single meter is supplying electricity that will be used in both qualifying and non-qualifying activities, tax should be paid to the utility provider and the taxpayer should apply directly to Maine Revenue Services for a refund based on a pro-rata portion of the electricity used in the qualifying activity.

For purposes of this provision, support activities include: storage operations; maintenance operations; and related administrative activities. Support activities **do not** include: activities conducted by a separate business; wood harvesting and/or processing activities; construction activities; reselling products procured or produced by someone else; and unrelated administrative activities.

**C. Effect of Electricity Restructuring on Maine Sales and Use Tax – March 2000**

Effective March 1, 2000, the traditional approach to selling electricity was substantially changed. As a result of electric restructuring, electricity is provided by two separate companies; an electricity supplier, and a transmission and distribution (T&D) company. The electricity supplier sells electricity to consumers in a competitive market. The T&D

company delivers the electricity over lines which they maintain and service. The following discusses the effect of this restructuring on sales and use taxation.

**i. Sales by Competitive electricity providers.** Where electricity is purchased from a competitive electricity provider (CEP), the competitive provider is the retailer selling the electricity and is responsible for registering, collecting and remitting sales and use tax. Even though the CEP may contract with a T&D company to provide billing functions, MRS holds the CEP liable for any collections made on their behalf by T&D companies as well as for any tax that was required to be collected and is subsequently determined to be due.

**a. Direct billings**

If a CEP bills its customers directly, it should calculate the tax and remit the tax directly to the State.

**b. Contracting with T&D to provide billing functions**

If a CEP contracts with a T&D to provide billing functions, the T&D should calculate and collect the appropriate tax on the entire sale. Tax attributable to the sales of electricity, along with detailed supporting documentation, should then be forwarded to the CEP who would then complete the sales and use tax return for each period. If upon audit it is determined that tax was erroneously not collected on taxable transactions, MRS will assess the CEP for the additional tax and applicable interest and penalties.

**ii. Standard Offer Service.** Electricity is automatically provided by the Standard Offer Service when a customer does not choose to purchase from a competitive electricity provider. This electricity is provided by a number of producers making up the standard offer pool. The Standard Offer Service contract requires the T&D to “calculate, bill, collect and remit” sales tax on sales of electricity through the standard offer service. Due to the nature of the Standard Offer Service arrangement, MRS would hold the T&D liable for the collections made.

Tax attributable to the sales of electricity and the transmission and distribution of electricity would be reported on the sales and use tax return of the T&D company for each period. MRS would also hold the T&D company liable for any tax that was required to be collected and subsequently determined to be due. If upon audit it is determined that tax was erroneously not collected on taxable transactions, MRS will assess the T&D for the additional tax and applicable interest and penalties.

**iii. Transmission and distribution of electricity.** Separate charges for the transmission and distribution of electricity are subject to sales and use tax. The same exemptions that exist for the sale of electricity also apply to the T&D charges.

**iv. Changing suppliers during a period.** Customers may choose to terminate receiving electricity through the standard offer service and begin purchasing from a competitive electricity provider, or vice-versa. In either event, such a change may not always occur at

the beginning of a billing period that would affect the application of the sales tax exemption for the first 750 kWh for residential customers. Each CEP may apply the 750 kWh exemption to each residential customer for the month or portion of the month for which it is billing. Similarly, each T&D can apply the 750 kWh exemption to each residential customer for the month or portion of the month for which they are billing.

### **3. GAS**

#### **A. Exempt Sales.** Sales of gas for the following uses are exempt:

Homes, mobile homes, boarding homes and apartment houses;

Seasonal dwellings, except tourist and trailer camps as defined in Section 1752, sub-sections 19 and 20 of the Sales and Use Tax Law.

(Refer to Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.)

#### **B. Taxable Sales.** Sales of gas for the following uses are taxable:

Hotels and motels, tourist and trailer camps, and overnight cabins;

Nursing homes (unless otherwise exempt);

Motor homes, travel trailers, and gas grills;

All commercial users except those listed in subsection 'a' above.

20-lb. tanks and similar containers of gas. These are presumed to be sold for taxable uses. If the customer states that a 20-lb. container of gas is purchased for residential use, the seller should obtain an affidavit from the customer.

Heating of a residential pool and/or garage

### **4. WATER**

#### **A. Exempt Sales.** Sales of water for the following uses are exempt:

Homes, mobile homes, boarding homes, nursing homes, and apartment houses;

Seasonal dwellings, except tourist and trailer camps as defined in Section 1752, subsections 19 and 20 of the Sales and Use Tax Law;

Trailer parks for use by the park tenants.

(Refer to Sections 5 and 6 of this bulletin for partial exemptions and other exempt sales.)

**B. Taxable Sales.** Sales of water for the following uses are taxable:

Hotels and motels, tourist and trailer camps, and overnight cabins;

All commercial users except those listed in subsection 'a' above.

**C. Bottled Water.** All sales of bottled water sold from retail locations are subject to tax. The taxability of bottled water delivered by the seller will be governed by subsections 'A' and 'B' above.

## **5. PARTIAL EXEMPTIONS**

**A. Coal, Oil and Wood; Gas; Water.** In situations where a portion of the use is taxable and a portion is exempt, the owner of the building should break down to the nearest 10% the taxable and nontaxable portions. The seller or utility, acting in good faith, may accept the estimate of the customer and should retain a copy of the letter or notification giving this breakdown .

Examples of dual uses are:

A hotel containing a restaurant

An apartment building containing a store

A residence with a heated pool and/or garage

**B. Electricity.** When electricity for both commercial and residential uses is sold on the same meter, it is considered to be for residential use if it is billed by the electric utility at residential rates, and the first 750 KWH per month are exempt. If it is billed by the electric utility at commercial rates, it is considered to be for commercial use and the exemption does not apply unless the use is primarily for one of the purposes listed in Section 2, subsection 'B' of this bulletin. The tax may be prorated based on a square footage calculation. Tax would apply to the percentage of the electric bill that is attributable to the commercial use of the building. The 750KWH residential exemption would apply to the percentage of the bill that applies to the residential use.

## **6. OTHER EXEMPT SALES**

**A. Government Agencies.** Sales made directly to the federal government, the State of Maine or any political subdivision of the State of Maine (such as counties, cities, towns or plantations ), or to any agency or instrumentality of the above governments, are exempt from sales tax. No evidence of exemption is required other than the invoice of the seller indicating sale to the government or government agency. Sales to other states or foreign countries or their subdivisions are not exempt from Maine sales tax.

- B. Exempt Organizations.** The Sales and Use Tax Law provides exemptions for various organizations, such as hospitals, schools, regularly organized churches or houses of religious worship, and certain other organizations. When selling to exempt organizations, the seller should require the customer to furnish a certificate of exemption in accordance with Rule 302.

## **7. MANUFACTURING**

- A. Fuel and Electricity.** The Maine Sales and Use Tax Law does not totally exempt fuel or electricity sold for industrial purposes, except fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale.

95% of the sale price of fuel and electricity used at a manufacturing facility is exempt. The remaining 5% is subject to the general sales and use tax rate.

- B. Water.** Sales of water to industrial users are exempt only if the water will become an ingredient or component part of tangible personal property produced for sale, or if the water is consumed or destroyed or loses its identity directly and primarily in the production of tangible personal property for later sale. The seller of water claimed exempt under one of these provisions should require the customer to furnish a blanket certificate of exemption in accordance with Rule 303.

## **8. ADDITIONAL INFORMATION.**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1065  
AUGUSTA, ME 04332-1065  
TEL: (207) 624-9693  
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**ATTACHMENT #1**  
**Excerpts taken from 36 M.R.S.A.**

**36 § 1752. Definitions.**

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

**6-A. Manufacturing facility.** "Manufacturing facility" means a site at which is located machinery and equipment used directly and primarily in either the production of tangible personal property intended to be sold or leased ultimately for final use or consumption or the production of tangible personal property pursuant to a contract with the United States Government or any agency thereof. It includes the machinery and equipment and all machinery, equipment, structures and facilities located at the site and used in support of production or associated with the production.

**10. Retailer.** "Retailer" means any person who makes retail sales or who is required to register by section 1754 or is registered under section 1756.

**11. Retail sale.** "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

**14. Sale price.** "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;



(3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;

**17-A. Taxable service.** "Taxable service" means:

I. Transmission and distribution of electricity.

**19. Tourist camp.** "Tourist camp" means a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation.

**20. Trailer camp.** "Trailer camp" means a place where space is offered with or without service facilities to the public for tenting or for the parking and accommodation of automobile trailers which are used for living quarters and the rental price shall include all service charges paid to the lessor.

### **36 M.R.S.A. § 1760 Exemptions.**

No tax on sales, storage or use shall be collected upon or in connection with:

**9. Coal, oil and wood.** Coal, oil, wood and all other fuels, except gas and electricity, when bought for cooking and heating in homes, mobile homes, hotels and apartment houses, and other buildings designed both for human habitation and sleeping.

**9-B. Residential electricity.** Sale and delivery of the first 750 kilowatt hours of residential electricity per month. For the purpose of this subsection, "residential electricity" means electricity furnished to homes, mobile homes, boarding homes and apartment houses, with the exception of hotels and motels. Where residential electricity is furnished through one meter to more than one residential unit and where the transmission and distribution utility applies its tariff on a per unit basis, the furnishing of electricity is considered a separate sale for each unit to which the tariff applies. For purposes of this subsection, "delivery" means transmission and distribution;

**9-C. Residential gas.** Sales of gas when bought for cooking and heating in residences. For the purpose of this subsection, "residences" shall mean homes, mobile homes, boarding homes and apartment houses, with the exception of hotels and motels.

**9-D. Fuel and electricity used at a manufacturing facility.** Ninety-five percent of the sale price of all fuel and electricity purchased for use at a manufacturing facility. For purposes of this subsection, "sale price" includes, in the case of electricity, any charge for transmission and distribution.

**9-G. Fuel oil or coal.** Fuel oil or coal, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale.

**39. Residential water.** Sales of water purchased for use in homes, mobile homes, boarding homes and apartment houses and other buildings designed for both human habitation and sleeping, with the exception of hotels and motels.

### **36 M.R.S.A §1811. Sales Tax**

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

The tax imposed upon the sale and distribution of gas, water or electricity, or telecommunications services, by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary.